Subject: Your application for access to documents – EASE 2023/2282

Dear Sir,

We refer to your email dated 18 April 2023 wherein you make a request for access to documents pursuant to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (hereinafter ‘Regulation 1049/2001’), registered under the abovementioned reference number. We also refer to our holding reply, dated 12 May 2023, our reference Ares(2023)3326604, whereby we informed you that the time limit for handling your application was extended by 15 working days pursuant to Article 7(3) of Regulation 1049/2001.

1. SCOPE OF YOUR APPLICATION

Your application reads as follows:

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"Dear Communications Networks, Content and Technology,

Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents which contain the following information:

- The number of officials within DG CONNECT who accepted third party contributions for their missions that were not provided by EU Member States, EEA and EFTA countries, international organisations or fora, such as the UN,
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By email:
ask-request-12874-
ddb03865@asktheeu.org
G20/G7 or public and private universities when the mission was for academic purposes between January 1 2022 and December 31 2022.

- All minutes, agendas, summary, correspondence, memos and any other reports drafted and received by DG CONNECT between January 1, 2022 and December 31, 2022 relating to the above missions.

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

We have identified four missions which fall within the scope of your request:

- Official mission of the Director of Directorate H to represent the Commission in Madrid for the SIC 22 awards event; price awarded to the Commission (MIPS ref. DL-22-2021546)
- Mission of a DG CONNECT official to Munich for the event ‘Europatag der Medientage München 2022’ (MIPS ref. DL-22-2018198)
- Mission of a DG CONNECT official to Cannes, MITCOM 2022 (MIPS ref. DL-22-2015027)
- Mission of a DG CONNECT official to Barcelona for the Animar BCN, 1st European Animation Convention (MIPS ref. DL-22-2030399)

The following documents related to the abovementioned missions have been identified as falling within the scope of your request:

- Animar key take-aways 2022, MIPS ref. DL-22-2030399 (‘Document 1’)
- Invitation to Animar BCN, 1st European Animation Convention, MIPS ref. DL-22-2030399 (‘Document 2’)
- Mission report MIPCOM-18 October, MIPS ref. DL-22-2015027 (‘Document 3’)
- Invitation to the ‘Europatag der Medientage München 2022’, MIPS ref. DL-22-2018198 (‘Document 4’)
- Programme of the abovementioned event, MIPS ref. DL-22-2018198 (‘Document 5’)
- Email from the Institute of European Media Law, dated 12 August 2022 regarding the invitation to the ‘Europatag der Medientage München 2022’, MIPS ref. DL-22-2018198 (‘Document 6’)
- Email dated 25 November 2022 concerning the Back to Office (BTO) report Animar, MIPS ref. DL-22-2030399 (‘Document 7’)
- Email dated 20 October 2022 concerning the invitation to Animar BCN, 1st European Animation Convention, MIPS ref. DL-22-2030399, (‘Document 8’)
- Email exchanges between Revista SIC and DG CONNECT, dated 19 October 2022, concerning the invitation to the SIC 22 awards event, MIPS ref. DL-22-2021546, (‘Document 9’)
- Email from Revista SIC, dated 29 September 2022, MIPS ref. DL-22-2021546, (‘Document 10’)  
- Email from Revista SIC, dated 24 October 2022, MIPS ref. DL-22-2021546, (‘Document 11’)  
- Email dated 5 October 2022 concerning the participation in MITCOM, MIPS ref. DL-22-2015027, (‘Document 12’)  
- Email dated 22 September 2022 concerning the participation to the event ‘Europatag der Medientage München 2022’, MIPS ref. DL-22-2018198 (‘Document 13’)
3. **ASSESSMENT UNDER REGULATION 1049/2001**

Following an examination of the identified documents under the provisions of Regulation 1049/2001, we have arrived at the conclusion that partial access can be granted to eight documents, whilst disclosure is refused for five documents as their disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001. Please note that parts of Documents 6-8 have been also redacted as being outside the scope of the request.

**A. Partial disclosure**

(i) **Protection of privacy and integrity of the individual**

Full disclosure of Documents 2-8 is prevented by the exception concerning the protection of privacy and integrity of the individual outlined in Article 4(1)(b) Regulation 1049/2001, since they contain the following personal data:

- Names, functions and contact details of Commission staff members not pertaining to the senior management
- Names, functions and contact details of other natural persons.

Article 9(1)(b) of the Data Protection Regulation\(^1\) does not allow the transmission of these personal data, except if you prove that it is necessary to have the data transmitted to you for a specific purpose in the public interest and where there is no reason to assume that the legitimate interests of the data subject might be prejudiced. In your request, you do not express any particular interest to have access to these personal data nor do you put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

Consequently, I conclude that, pursuant to Article 4(1)(b) Regulation 1049/2001, access cannot be granted to the personal data contained in the requested documents, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

(ii) **Protection of the commercial interest**

Article 4(2) first indent of Regulation 1049/2001 provides that ‘the institutions shall refuse access to a document where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property, unless there is an overriding public interest in disclosure.’

This provision must be interpreted in light of Article 339 of the Treaty of the Functioning of the European Union (TFEU), which requires staff members of the EU institutions to refrain from disclosing information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

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A certain part of Document 3 contains sensitive information related to a third party’s activities, views and business strategies. There is a real and non-hypothetical risk that disclosure of this part of the above-mentioned document could undermine and seriously affect the commercial interests of the company at question.

Consequently, the above-mentioned part has been blanked out.

(iii) Protection of the ongoing decision-making process

The first subparagraph of Article 4(3) of Regulation 1049/2001 provides that ‘[a]ccess to a document, drawn up by an institution for internal use or received by the an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution’s decision-making process, unless there is an overriding public interest in disclosure.’

Parts of Documents 1, 3 and 7 are covered by the abovementioned exception of the first subparagraph of Article 4(3) since they contain sensitive information relating to ongoing developments in the audio-visual industry. Parts of Documents 1 contain information pertaining to the EU’s film funding initiatives. Certain parts of Document 3 include sensitive information on how collaboration with and between stakeholders could be fostered. By the same token, some paragraphs of Document 7 elaborate on further actions to be taken in the area of film production.

These documents contain considerations, reflections and views of the Commission services and of other parties. The content of these documents is subject to ongoing discussions and deliberations. The Commission services must be free to explore all possible options with regard to ongoing initiatives. The risk of disclosing sensitive information regarding the Commission services’ preliminary views would deter the Commission from freely expressing its opinions and having frank, internal discussions. Speculations and misinterpretations of the public on the views, positions, considerations put forward would affect the exploration of different options and unduly restrict the Commission’s internal space to think, exposing the Commission to external pressure. Disclosure of these documents would therefore seriously undermine the ongoing decision-making process. This risk is also reasonably foreseeable and not purely hypothetical.

Consequently, the above-mentioned parts have been blanked out.

B. Non-disclosure

We regret to inform you that access to Document 9-13 cannot be granted as disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

Disclosure of these documents is prevented by the exception of Article 4(2) first indent of Regulation 1049/2001 with regard to the protection of commercial interests of a natural or legal person, including intellectual property, for reasons set out in Section 3(A)(ii).

Documents 9-13 originate from third parties or are correspondence with third parties. After assessment and taking into account that we could not reach the third party within the statutory deadline, we have come to the conclusion that a disclosure could undermine the commercial interests of the third parties. Therefore, access to these documents cannot be granted as their disclosure is prevented by the exception to the right of access laid down in Article 4(2), first indent of Regulation 1049/2001.
Moreover, parts of these documents contain personal data, in particular the names and contact details of Commission staff members not pertaining to the senior management and names, functions and contact details of other natural persons, thus their disclosure is prevented by the exception of Article 4(1)(b) of Regulation 1049/2001 for the reasons set out in Section 3(A)(i).

We have considered whether partial access could be granted to these documents. However, partial access is not possible considering that these documents are covered in their entirety by the abovementioned exceptions of Article 4 of Regulation 1049/2001.

4. OVER RIDING PUBLIC INTEREST IN DISCLOSURE

The exceptions laid down in Article 4(2) of Regulation 1049/2001 apply, unless there is an overriding public interest in the disclosure of documents. Such an interest must, firstly, be a public interest and, secondly, outweigh the harm caused by disclosure. We have examined whether there could be an overriding public interest in the disclosure of the parts of the documents which are being withheld but we have not been able to identify such an interest.

5. REUSE OF DOCUMENTS

You may reuse public documents which have been produced by the European Commission or by public and private entities on its behalf based on the Commission Decision on the reuse of the Commission documents. You may reuse Documents 1, 3 and 7 free of charge and for non-commercial and commercial purposes provided that the source is acknowledged and that you do not distort the original meaning or message of the documents. Please note that the Commission does not assume liability stemming from the reuse.

Please note that Documents 1, 3 and 7 were drawn up for internal use under the responsibility of the relevant services of DG CONNECT. They solely reflect the services’ interpretation of the interventions made and do not set out any official position of the third parties to which the documents refer, which were not consulted on their content. They do not reflect the position of the Commission and cannot be quoted as such.

Documents 2, 4-6 and 8 originate from third parties. Please note that they are disclosed to you based on Regulation (EC) No 1049/2001. However, this disclosure is without prejudice to the rules on intellectual property, which may limit your right to reproduce or exploit the released documents without the agreement of the originators, who may hold an intellectual property right on them. The European Commission does not assume any responsibility from their reuse.

6. CONFIRMATORY APPLICATION

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

Such confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretariat-General of the Commission. You can submit it in one of the following ways:
by asking for a review via your portal\(^2\) account (available only for initial requests submitted via the portal account),

or by mail:

European Commission
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Bruxelles

or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,

Electronically signed

Roberto Viola

Enclosures: (8)

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\(^2\) https://www.ec.europa.eu/transparency/documents-request